

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1618

COMMONWEALTH

vs.

ANDREA L. LIBBY.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

After a bench trial in the District Court, the defendant, Andrea L. Libby, was convicted of larceny under \$250 in violation of G. L. c. 266, § 30 (1). On appeal, Libby challenges the denial of her motion for a required finding of not guilty. We affirm.

We review the denial of a motion for a required finding of not guilty to determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Commonwealth v. Teixeira, 95 Mass. App. Ct. 367, 369 (2019), quoting Commonwealth v. Latimore, 378 Mass. 671, 677 (1979). Under Latimore, "circumstantial evidence is a permissible basis upon which to premise a conviction." Commonwealth v. Dancy, 75 Mass. App. Ct. 175, 178 (2009),

quoting Commonwealth v. Tanner, 66 Mass. App. Ct. 432, 434 (2006). Furthermore, "[a]n inference drawn from circumstantial evidence 'need only be reasonable and possible; it need not be necessary or inescapable.'" Commonwealth v. Merola, 405 Mass. 529, 533 (1989), quoting Commonwealth v. Beckett, 373 Mass. 329, 341 (1977).

"The elements of larceny . . . are (1) the unlawful taking and (2) carrying away (asportation) (3) of personal property of another (4) with specific intent to deprive the person of the property permanently. See G. L. c. 266, § 30." Commonwealth v. Vickers, 60 Mass. App. Ct. 24, 27 (2003). The evidence at trial permitted the judge to find the essential elements of larceny. The victim, who was acquainted with the defendant, allowed the defendant to stay in her apartment as a temporary guest when the defendant was homeless and needed help. On the date of the alleged larceny, the defendant was alone in the victim's apartment when the victim departed for work, did not appear for her own scheduled work shift later that day, and did not respond to the victim's efforts to contact her thereafter. When the victim returned home after work, the door to her apartment was locked. There was no indication of forced entry into the victim's apartment, nor was there any damage to the locks, one of which locks automatically. The victim, however, discovered that her apartment was "a mess" and that several items were

missing. The defendant's shirt and "vape pen" were found in the defendant's bedroom closet, intermingled with the victim's disordered property.¹ Notably, the spare set of keys to the victim's apartment were where the victim had left them, and an expensive Michael Kors bracelet was in plain sight.²

Viewed in the light most favorable to the Commonwealth, the evidence, although circumstantial, was sufficient to permit the judge to find beyond a reasonable doubt that the defendant committed the larceny. See G. L. c. 266, § 30 (1). See also Commonwealth v. Liebenow, 470 Mass. 151, 156-157 (2014); Latimore, 378 Mass. at 677. The defendant's presence inside the victim's apartment in the victim's absence, the defendant's unexplained departure from the apartment and subsequent silence in the face of the victim's efforts to contact her, the fact that the defendant's personal items were found in the victim's rifled closet, and the idiosyncratic nature of the items stolen allowed the trial judge to conclude that the defendant had taken the missing property, and that she did not intend to return it.

¹ Among the missing items were, significantly, a woman's blouse, as well as other women's clothing, jewelry, and cosmetics.

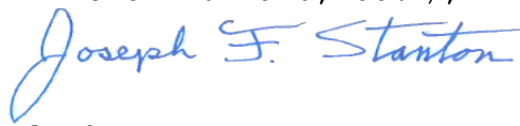
² The defendant was aware that the bracelet was of particular sentimental significance to the victim; the fact that it was not among the property taken from the apartment suggests that the bracelet was left behind in deference to the victim's concerns. See Commonwealth v. Latney, 44 Mass. App. Ct. 423, 425 (1998) (particular qualities of stolen items found in defendant's possession pointed to defendant's involvement in theft).

See Commonwealth v. Nore, 12 Mass. App. Ct. 976, 977 (1981) (despite lack of eyewitness evidence, strong chain of circumstantial evidence linked defendant to crime).

The defendant's argument that others could have accessed the victim's apartment at the time of the theft does not require a different conclusion. The Commonwealth need not exclude all other hypotheses. See Merola, 405 Mass. at 533. "That another might have had [the] opportunity [to commit the crime] goes only to the weight of the evidence, which is a matter for the finder of fact." Commonwealth v. Perez, 27 Mass. App. Ct. 550, 552 (1989), quoting Commonwealth v. Casale, 381 Mass. 167, 175-176 (1980).

Judgment affirmed.

By the Court (Blake,
Ditkoff & Hand, JJ.³),



Clerk

Entered: October 30, 2019.

³ The panelists are listed in order of seniority.